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Defamation--Jurisdiction of Equity to Enjoin

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impulse test, on the ground that an impulse to do harm by one who knows the difference between right and wrong can not be irresistible. *State v. Painter*, 135 W. Va. 106, 63 S.E.2d 86 (1950); *State v. Beckner*, 118 W. Va. 430, 190 S.E. 693 (1937); *State v. Fugate*, 103 W. Va. 653, 138 S.E. 318 (1927); *State v. Evans*, 94 W. Va. 47, 117 S.E. 885 (1923); *State v. Barker*, 92 W. Va. 583, 115 S.E. 421 (1922); *State v. Cook*, 69 W. Va. 717, 72 S.E. 1025 (1911); *State v. Maier*, 36 W. Va. 757, 15 S.E. 991 (1892). This position has been criticized as being disharmonious with medical knowledge, and a departure by the court from the judicial function and an assumption of the role of an expert medical witness. Keedy, *Irresistible Impulse as a Defense in Criminal Law*, 100 U. OF PA. L. REV. 956, 988-89 (1952).

It would seem that there will continue to be disparities between those courts which attempt to adjust their standard of criminal liability to meet the realities of human behavior as revealed by the research of medical science which has led to the conclusion, at least in our time, that man may be a pawn to the intricate and hidden forces in his own mind; and those courts which adhere to the historical concept of criminal liability that must be juxtaposed to what has been considered best for a civilized society: that man must meet a certain minimum standard of conduct regardless of his infirmities unless the weakness is so marked as to fall within the strict test for insanity. GUTTMACHER & WEIHOFEN, *PSYCHIATRY AND THE LAW* (1952); HOLMES, *THE COMMON LAW* 50-51 (1881).

T. B. M.

DEFAMATION—JURISDICTION OF EQUITY TO ENJOIN.—*D* circulated statements, by published letter and word of mouth, that *P* attorney was a shyster, deceiver, betrayer of clients, and other defamatory matter in general. *D* appealed from a temporary injunction granted in favor of *P* by the circuit court. *Held*, that equity has no jurisdiction to enjoin the publication of defamatory statements relating to personality and professional conduct. *Kwass v. Kersey*, 81 S.E.2d 237 (W. Va. 1954).

Thus there was presented squarely before the court a question of law frequently debated by some of our greatest legal scholars, that is, whether a court of equity has jurisdiction to restrain the publication of defamation as such? Though the debate may continue as to what the law should be, there is no doubt as to what the cases hold. The decisions are legion that equity will not

enjoin mere defamation. *Yood v. Dody*, 37 Ohio App. 574 (1930). *Thompson v. Union*, 126 N.J. Eq. 119, 8 A.2d 130 (1939). The modern cases, however, have nibbled substantially into the rule by providing for equitable relief where certain other factors are present in addition to the defamation. A few of these exceptions will be noted below.

Whether we may give any reasons other than purely historical for a doctrine which at first blush is so arbitrary and unjust is of course not within the purview of this short comment. For one of the best articles which argues eloquently that courts of equity should have jurisdiction to grant injunctions in such cases, see Pound, *Equitable Relief Against Defamation*, 29 HARV. L. REV. 640 (1915). It is interesting that the court in the instant case noted that "while the article by Dean Pound is very persuasive, we do not agree with the conclusion expressed therein."

The principal case is interesting mainly for the collateral decisions of the court necessary in order to overcome some apparently insurmountable obstacles in the way of the final result.

First, the court admits that equity would have jurisdiction to restrain the publication of defamation in cases involving conspiracy, intimidation, or coercion. These are some of the more common exceptions to the general rule under discussion that equity has no jurisdiction to enjoin defamation. *Garipey v. Springer*, 318 Ill. App. 523, 48 N.E.2d 572 (1943). In the instant case *P* very forcefully alleged in his bill for relief that *D* conspired with another to destroy *P*'s law business; that *D* attempted by such defamation to coerce *P* to testify as a witness in litigation in which *D* was interested; and that *D* had made threats of bodily harm to *P*. The cause came up on demurrer where it is a fundamental rule of pleading that all facts well pleaded in the bill are taken for confessed. Nevertheless these unequivocal allegations which would seemingly qualify for equity relief were rejected by the terse remark that such allegations were denied in the answer.

The second main obstacle which stood in the way of refusing relief was passed over with equal ease, that is, the right to practice law is a property right, *Unger v. Landlords' Management Co.*, 114 N.J. Eq. 68, 168 Atl. 229 (1933); hence defamation tending to deprive *P* of such a right should properly be enjoined by a court of equity. That a property right is being infringed upon is perhaps the most frequent ground for equitable relief in defamation cases. After noticing both the fact that the right to practice law is a property right and that the similar right of a doctor had

been the subject of an injunction in a prior holding, *Sloan v. Mitchell*, 113 W. Va. 506, 168 S.E. 800 (1933), the problem was dismissed by saying, "Since there is no defamation of tangible personal property alleged or shown in this record, we do not think that any question of defamation or disparagement of tangible personal property can be here considered." No case was cited after this rather obscure remark and just how this answered *P*'s contention that equity should protect this valuable property right is hard to understand.

The third and perhaps most interesting point is raised by the court's reference to the right of a jury trial. It was said that if a right of trial by jury existed prior to the adoption of the West Virginia Constitution, the *legislature* can not legally extend equity jurisdiction to such defamation cases and thus deprive a litigant of a jury trial against his will since the constitution guarantees the right to trial by jury where the controversy exceeds twenty dollars exclusive of interest and costs.

The answer to this objection is that no *legislative* extension of equity jurisdiction is presented. Rather it is just an ordinary bill in equity seeking relief from wanton destruction of a valuable property right. The right to such relief is based on the ancient ground of jurisdiction that to refuse such relief would result in a multiplicity of actions at law for damages, irreparable harm to his law practice, and inadequacy of a legal remedy in general. The exercise of equity jurisdiction in such a case as this has nothing to do with the situation where the legislature cuts off a person's right to a jury trial by granting equity jurisdiction to a field of controversy hitherto completely foreign to equity.

Nevertheless, the court in the present case denied the jurisdiction in unequivocal terms. The decision was rendered in the face of a most authoritative article contending for an opposite result and a most incisive dissenting opinion pointing out the rather obscure foundations of the decision as emphasized in this comment. However, it would seem to be too broad an assumption that the present case is a condemnation of the modern trend in equity to exercise jurisdiction not only where the legal remedy is inadequate but where the legal remedy is not as practical or efficient as the equitable relief might be. *Buskirk v. Sanders*, 70 W. Va. 363, 73 S.E. 937 (1912); *Consumers' Gas Util. Co. v. Wright*, 130 W. Va. 508, 44 S.E.2d 584 (1947).

It would seem though that it will take an unusual case indeed to induce the court to grant equitable relief in a case of defamation.

C. B. F.